

50th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION

Thursday, November 20, 2003
Minutes

Vice Chairman Malouf called the meeting to order at 1:00 p.m.

Commissioners present: Chase, Crofoot, Lucht, Moffit, Nicolay, Risher, Row, Salamon, and Toulson

He welcomed our newest commissioner, Clifton Toulson. Mr. Toulson is the Deputy Associate Administrator for Small Business Development at the United States Small Business Administration.

ITEM 1.

Approval of Minutes

Commissioner Ernest Crofoot made a motion to approve the Minutes of the October 30, 2003 meeting of the Commission, which was seconded by Stephen Salamon, and unanimously approved as amended by Commissioner Salamon regarding his dissenting vote on the Comprehensive Standard Health Benefit Plan.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

At the request of Commissioner Salamon, Enrique Martinez-Vidal, Deputy Director of Performance and Benefits, updated the Commission on the progress of a study of a basic benefit plan. Copies of the *Update* were available on the documents table and on the Commission's website at:

<http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

FINAL ACTION: COMAR 10.25.10: Maryland Physicians Trauma Services Fund

Ben Steffen, Deputy Director for Data Systems and Analysis and Joel Tornari, Assistant Attorney General, presented the regulations governing the operation of the trauma fund for final approval. During the last legislative session, the General Assembly passed SB 479 requiring the Commission and the Health Services Cost Review Commission to administer a fund of about \$10 million dollars to reimburse trauma physicians for uncompensated care and under compensated care under Medicaid, and trauma centers' on-call expenses. Commissioner Crofoot made a motion to approve the regulation, which was seconded by Commissioner Constance Row, and unanimously approved

FINAL ACTION: COMAR 10.25.10: Maryland Physicians Trauma Services Fund is hereby APPROVED.

ITEM 4.

RELEASE FOR PUBLIC COMMENT: HMO Measures for 2004 and 2005

Joyce Burton, Chief of HMO Quality and Performance, said that the Commission is charged with developing and implementing a system to comparatively evaluate the quality of care outcomes and performance measurements of HMOs ("HMO Report Card"). Staff recommended measures for HEDIS, behavioral health, and urgent care to be collected during calendar year 2004 and 2005 to be released for public comment through December 12, 2003. Commissioner Crofoot made a motion to release the measures for public comment, which was seconded by Commissioner Row, and unanimously approved.

RELEASE FOR PUBLIC COMMENT: HMO Measures for 2004 and 2005 is hereby APPROVED.

ITEM 5.

RELEASE FOR PUBLIC COMMENT

- *Mandated Services Evaluation Reports (Annual Report and Comprehensive Study); and*
- *Study of Administrative Costs in the Small Group Market*

Vice Chairman Malouf said that the Commission began its yearly process of reviewing and seeking informal public comment on reports and studies required by law to be produced for the Maryland General Assembly. Mr. Martinez-Vidal discussed the progress on two reports. He said that (a) the MHCC is required to assess the financial, social, and medical impact of proposed mandates. The mandated benefits report describes and analyzes those benefits, which are required to be offered in the individual and large group markets. (b) The 2003 General Assembly enacted HB 605, which repealed the 2.2% affordability cap for mandated services along with the study required under Section 15-1502 of the Insurance Article, effective July 1, 2003. The bill now requires the MHCC to conduct an alternative comparative evaluation of existing mandated benefits and report to the General Assembly by January 1, 2004, and every four years thereafter. These reports were being further revised and would be available the following week. Another report, required last year by SB 477, examines the administrative costs of health plans offered to small employers. Commissioner Row made a motion to approve the release of all reports for public comment, which was seconded by Commissioner Debra Risher, and unanimously approved.

ACTION: The *Mandated Services Evaluation Reports*; and the *Study of Administrative Costs in the Small Group Market* are hereby RELEASED FOR PUBLIC COMMENT.

ITEM 6.

PRESENTATION: *Health Insurance Coverage in Maryland Through 2002*

Vice Chairman Malouf said that Linda Bartnyska, Chief, Cost and Quality Analysis, would brief the Commission on Health Insurance Coverage in Maryland through 2002. He said that given the recently reported increase in the uninsured in the state, that this report will be the foundation for many of the proposals offered in Annapolis for expanded coverage. Ms. Bartnyska presented a summary of the report. It is available on the Commission's website at:

http://www.mhcc.state.md.us/health_care_expenditures/_healthcareexp.htm. Vice Chairman George Malouf thanked Ms. Bartnyska for her report.

ACTION: *Health Insurance Coverage in Maryland Through 2002* is hereby RELEASED.

ITEM 7.

ACTION: CERTIFICATE OF NEED:

- Potomac Ridge Behavioral Health, Application for CON to Develop a 12-Bed Child Psychiatric Service, Docket No. 03-15-2113
- Good Samaritan Hospital, Application for CON to Add Three General Purpose Operating Rooms and 9 Post Anesthesia Care Unit (PACU) Beds, Docket No. 03-24-2117
- Declaratory Ruling on Whether a New Medical Program Can Be Established Pursuant to the Exemption Process

Potomac Ridge Behavioral Health, Application for CON to Develop a 12-Bed Child Psychiatric Service, Docket No. 03-15-2113

Susan Panek, Chief, Certificate of Need, presented the application from Potomac Ridge Behavioral Health to establish a twelve-bed child psychiatric service. She said that Potomac Ridge applied for a CON to develop and operate 12 additional inpatient psychiatric beds, which it will dedicate to psychiatric treatment for children ages 6-11 years. It will renovate approximately 3,766 square feet of existing classroom space to accommodate the six semi-private rooms and associated day rooms, family therapy rooms, and other support space. Based on its review and analysis of the CON application, staff has determined that the proposal by Potomac Ridge to increase its licensed bed capacity by 12 beds, and undertake \$918,064 in related capital expenditures meets all applicable State Health Plan standards, and complies with the remaining general CON review criteria. Accordingly, staff recommended that the Commission **APPROVE** the application of Potomac Ridge for a CON to undertake the expenditure of \$918,064 for the development and operation of a 12-bed child inpatient psychiatric unit, and the facility renovations associated with the new program. Commissioner Crofoot made a motion to approve the Certificate of Need, which was seconded by Commissioner Row, and unanimously approved.

ACTION: Potomac Ridge Behavioral Health, Application for CON to Develop a 12-Bed Child Psychiatric Service, Docket No. 03-15-2113, is hereby APPROVED.

Good Samaritan Hospital, Application for CON to Add Three General Purpose Operating Rooms and 9 Post Anesthesia Care Unit (PACU) Beds, Docket No. 03-24-2117

Pamela Barclay, Deputy Director of Health Resources, said that Good Samaritan Hospital (“GSH”), a member of MedStar Health System, is a 225-bed acute care hospital located at 5601 Loch Raven Boulevard in Baltimore City. GSH proposed to renovate and expand its operating room suite. The proposed project sought approval to construct nine new operating rooms. A new three-level facility housing the operating rooms (first level) and sterile processing and support services (basement and ground levels) will be constructed over the hospital’s loading dock and connect to the existing operating room suite. Following completion of the new operating room facility, space housing three existing operating rooms will be renovated to accommodate a 17-bed post anesthesia care unit (PACU) and related support services. In addition, three other existing operating rooms will be converted to other uses during the renovation. The proposed project will add 31,243 square feet and renovate an additional 7,581 square feet.

Staff found that Good Samaritan Hospital's proposed project is consistent with the applicable State Health Plan standards and with the general Certificate of Need criteria found in COMAR 10.24.01.08G(3)(a)-(f). For reasons presented in the report on this matter, staff recommended that the Commission **APPROVE** Good Samaritan Hospital's Certificate of Need application to construct nine new operating rooms contingent on receipt by December 1, 2003 of a modified Indigent/Charity Care Policy stating that GSH will make a determination of probable eligibility within two business days following a patient's request for charity care services, application for medical assistance, or both, as required by System Standards 10.24.10.06A(5) and 10.24.11.06A(2). Ms. Barclay introduced Larry Beck and Jennifer Weiss to the Commissioners. Commissioner Crofoot made a motion to approve the Certificate of Need, which was seconded by Commissioner Row, and unanimously approved.

ACTION: Good Samaritan Hospital, Application for CON to Add Three General Purpose Operating Rooms and 9-Post Anesthesia Care Unit (PACU) Beds, Docket No. 03-24-2117, is hereby APPROVED.

Petition for Declaratory Ruling on Whether a New Medical Program Can Be Established Pursuant to the Exemption Process

Vice Chairman Malouf said that at the October Commission meeting, the Commission voted to postpone action on a request for declaratory ruling filed by MedStar Health and Harbor Hospital with respect to a legal issue presented by an exemption request from North Arundel Hospital and the University of Maryland Medical System seeking to establish an obstetrics service at North Arundel Hospital. St. Agnes Hospital filed a letter asking that the Commission issue the declaratory ruling requested by MedStar Health.

Vice Chairman Malouf served as the Reviewer in this matter. His proposed decision was enclosed in the Commissioners' meeting materials, as well as the request for declaratory ruling filed by MedStar Health and Harbor Hospital and the opposition of North Arundel Hospital and the University of Maryland Medical System. He recommended that the Commission decline to rule on the Request for Declaratory Ruling. The Commission allowed counsel for MedStar Health and North Arundel Hospital to present argument to the Commission. Oral argument on the Proposed Decision was limited to ten minutes each.

MedStar Health and Harbor Hospital, through its counsel, Ralph Tyler, argued that Harbor Hospital, a MedStar facility, "might be adversely affected" if the Commission approved the North Arundel and UMMS' request. Further, Mr. Tyler argued that permitting the establishment of a new obstetrics service at North Arundel through an exemption is contrary to the Commission's enabling statute and regulations. The corporate transaction of one hospital merging with another, he contended, should not result in an increase in approved services. There is no basis in the CON statute or regulation to establish a new service by exemption from CON review. He requested that the Commission reject the conclusion of the Proposed Decision.

Jack Tranter, counsel for North Arundel Hospital and the University of Maryland Medical System, argued that the Commission should decline to address MedStar's petition for a declaratory ruling, and that the Commission may lawfully issue a CON exemption authorizing development of an obstetrics service at North Arundel Hospital because the Commission already dealt with this issue when it promulgated the exemption regulations. He argued that MedStar was asking the Commission to invalidate its own regulations. Mr. Tranter urged the Commissioners to adopt Vice Chairman Malouf's Proposed Decision.

Following oral argument and rebuttal, Vice Chairman Malouf set forth a summary of the Proposed Decision that the Commission decline to rule on the Petition for a Declaratory Ruling. Commissioner Crofoot made a motion that the Commission accept the Proposed Decision, which was seconded by Commissioner Robert Moffit. Following discussion among the Commissioners and AAG Joel Tornari, Vice Chairman Malouf called for a vote. Commissioners Crofoot, Chase, Lucht, Risher, Salamon, and Toulson voted in favor of the

Motion to accept the Proposed Decision. Commissioners Nicolay, Moffit, and Row voted against the motion.

ACTION: The Proposed Decision to Decline to Issue a Declaratory Ruling on Whether a New Medical Program Can Be Established Pursuant to the Exemption Process is hereby APPROVED.

ITEM 9.

Hearing and Meeting Schedule

Vice Chairman Malouf said that the next scheduled meeting of the Maryland Health Care Commission would be on Thursday, December 18, 2003 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at 1:00 p.m.

ITEM 10.

Adjournment

There being no further business, the meeting was adjourned at 3:20 p.m. upon motion of Commissioner Crofoot, which was seconded by Commissioner Salamon, and unanimously approved by the Commissioners.